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DEPARTMENT OF
WATER RESOURCES

Therefore, water right claim no. 21-13132 is now claimed under the accompanying Motion to File Late Claim.

STANDARD OF REVIEW

SUPPORTING POINTS AND AUTHORITIES

Claimant's motion meets the "good cause" standard under I.R.C.P. 55(c). As explained in the Motion to File Late Claim and below, Claimant's failure to file a timely enlargement claim was not "willful". Furthermore, granting the motion will not prejudice any other party, and the basis for the motion shows a meritorious position. The Court should therefore grant Claimant's motion.

I. Claimant's Failure to File a Timely Enlargement Claim in Subcase 21-7104 was not "Willful."

Claimant did not file a timely Enlargement Claim to IDWR's recommendation for 21-7104. However, because Claimant had previously filed its claim for 21-7104, it believed it had fully covered the acres authorized by said right and only recently discovered that the original pivot placed upon the premises actually watered 25.3 acres more than authorized by the license.

In defining "willful" action, the Presiding Judge, relying upon Black's Law Dictionary, has noted the following:

"In civil actions the word often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental." Black's further defines the term as, "A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from act done carelessly, thoughtlessly, or inadvertently. A willful act differs essentially from a negligent act. The one positive and the other negative."

Order on Permissive Review and Order of Recommitment, (Bedke II) at 8.

Claimant's mistake in not recognizing or understanding that the full irrigated lands were not covered by the original water right license is understandable and far different that one seeking a late claim to lands which were never claimed in the first place. In sum, the failure to file a

timely enlargement claim to the place of use element for 21-7104 was not “willful.”

II. Granting Claimant’s Motion Will Not Prejudice Any Parties.

Because the entire 157.3 acres were watered from the beginning of the installation of the irrigation pivot and because the enlargement statutes under I.C. 42-1426 provide the adequate protection for other water users, no other water rights will be harmed by granting the motion. In sum, Claimant’s motion for late claim meets the “no prejudice” criteria under the Rule 55(c) standard.

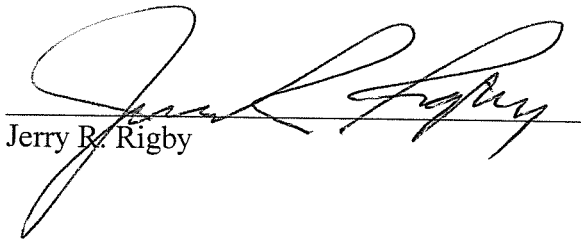
III. Claimant Has a Meritorious Position for its Late Claim.

Claimant’s actual and clear use of water right 21-7104 from 1977 to the present on 157.3 acres of land (25.3 acres more than the original right) is precisely the type of facts which qualify one to be entitled to a water right under the enlargement statutes set forth in I.C. 42-1426.

CONCLUSION

The Court should grant the motion to file late claim by Claimants.

DATED this 19th day of January, 2012.

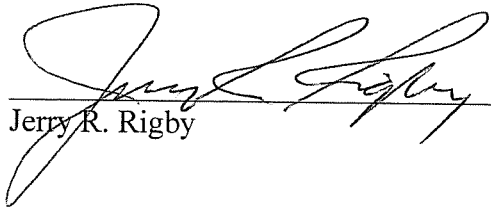

Jerry R. Rigby

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DATED this 19th day of January, 2012.

RIGBY ANDRUS & RIGBY, Chartered


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